

STATE OF MICHIGAN  
COURT OF APPEALS

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ELLA SUE PARKER,

Plaintiff-Appellant,

v

CONSUMERS POWER COMPANY,

Defendant-Appellee.

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UNPUBLISHED

January 9, 2001

No. 206221

WCAC

LC No. 93-000271

ON REMAND

Before: Bandstra, C.J., and Hood and Jansen, JJ.

PER CURIAM.

This case is on remand from the Supreme Court for reconsideration in light of *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691; 614 NW2d 607 (2000). *Parker v Consumers Power Co*, 463 Mich 893 (2000). Previously, a majority<sup>1</sup> of this Court affirmed the Worker's Compensation Appellate Commission's (WCAC) decision that reversed the magistrate and denied benefits to plaintiff. We again affirm the WCAC.

Plaintiff began working for defendant in 1979 as a mail clerk and in May of 1987, she transferred to the engineering records center. Plaintiff's problems at work began with this transfer and she was ultimately discharged in November of 1990 for poor work performance. On April 29, 1991, plaintiff petitioned for worker's compensation benefits, alleging a work-related psychiatric disability. The magistrate awarded plaintiff an open award of benefits in an opinion signed on August 10, 1992; however, the WCAC, in an opinion dated February 8, 1996, found that the magistrate's decision was not supported by competent, material, and substantial evidence and that the magistrate's decision was not consistent with the Supreme Court's decision in *Gardner v Van Buren Public Schools*, 445 Mich 23; 517 NW2d 1 (1994). Thus, the WCAC denied plaintiff's request for benefits.

In *Mudel, supra*, p 709, the Court made clear that review by the courts begins with the WCAC's decision, not the magistrate's decision. If there is "any evidence" supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate

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<sup>1</sup> The two prior majority panel members, Judge MacKenzie and now-Justice Markman, are no longer with the Court of Appeals and have thus been substituted.

role in reviewing the magistrate's decision, then the courts must treat the WCAC's factual findings as conclusive. *Id.* In other words, if the WCAC did not engage in de novo review or apply the wrong rule of law and there exists in the record any evidence supporting the WCAC's decision, then the courts must treat the WCAC's factual decisions as conclusive. *Id.*, pp 703-704.

In the present case, it appears that the WCAC's decision is in accord with the dictates set forth in *Mudel*, and we must affirm. The WCAC specifically found that the magistrate's decision was not supported by competent, material, and substantial evidence on the whole record to support a finding that the events of employment affected plaintiff's mental health in a significant manner. MCL 418.301(2); MSA 17.237(301)(2). There is evidence in the record to support the WCAC's factual decision in this regard. Although plaintiff testified to the events at work and presented the testimony of a co-worker, defendant presented the testimony of three other co-workers who refuted plaintiff's claims. Also, plaintiff presented the deposition testimonies of two doctors, while defendant also presented the deposition testimonies of two doctors. The WCAC accepted some of the magistrate's findings, and examined and compared the occupational and non-occupational factors affecting plaintiff's mental health. The WCAC then weighed the significance of work events against all non-occupational events and determined that plaintiff had not proven that the events of employment had affected plaintiff's mental health in a *significant manner*, as required by *Gardner, supra*, p 28.

The WCAC is granted certain fact-finding powers, under MCL 418.861a(13), (14); MSA 17.237(861a)(13), (14), and in some circumstances the WCAC may substitute its own findings of fact for those of the magistrate, if the WCAC accords different weight to the quality or quantity of the evidence presented. *Mudel, supra*, pp 699-700. This is what the WCAC did when it found that the magistrate did not thoroughly evaluate plaintiff's non-occupational factors and found that defendant's expert, Dr. Ager, did consider all factors in his evaluation of plaintiff. Since the WCAC may substitute its own findings of fact for those of the magistrate if the WCAC accords different weight to the quality or quantity of the evidence presented, we must conclude that the WCAC did not misapprehend its administrative appellate role and there is evidence in the record supporting the WCAC's factual decision.

Accordingly, the decision of the WCAC to deny worker's compensation benefits to plaintiff is affirmed.

Affirmed.

/s/ Richard A. Bandstra

/s/ Harold Hood

/s/ Kathleen Jansen